

Brian C. Shrive

From: Brian C. Shrive
Sent: Monday, December 24, 2018 10:52 AM
To: Woerner, Emily; Christopher P. Finney; Justin C. Walker; Emma Brodzki; Brandy E. Fitch
Cc: Boggs Muething, Paula; Stackpole, Peter
Subject: Re: Subpoenas

Emily,

as an initial matter, we emailed you the subpoenas the day they were issued, so you have known about them for 20 or so days. To suggest that this is something you just learned about is disingenuous at best.

Secondly, the subpoenas were issued because your clients refuse to cooperate in discovery. Had they answered our interrogatories, we could have been able to limit our subpoena to the phone numbers provided in response to our interrogatories. But since your clients steadfastly refuse to provide information that would limit our need to subpoena records at all, we are forced to issue subpoenas without knowing with whom your clients communicated. This is entirely your clients' creation, not mine.

Finally, despite my repeated requests for an update, this is the first time you have provided me with any information that there has been any success in your efforts to recover the deleted/destroyed messages from Councilmembers Dennard and Young. So your statement that you have informed me is untrue.

We are very much interested in resolving this matter, but until it is resolved it is not resolved, and we must continue with discovery. Cell phone providers only hold information for so long, so we cannot waste any more time.

As such, we will not modify or withdraw our subpoenas. If you have a solution that would provide us with the information we are seeking without the subpoenas, we are happy to listen.

Thank you,

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From: Woerner, Emily <Emily.Woerner@cincinnati-oh.gov>

Sent: Sunday, December 23, 2018 4:31 PM

To: Christopher P. Finney; Brian C. Shrive

Cc: Boggs Muething, Paula; Stackpole, Peter

Subject: Subpoenas

Chris and Brian,

We received notice of the subpoenas you issued to the Councilmember Respondents in the open meetings case. We are surprised and concerned that you would issue such a broad subpoena to each of the Councilmembers' service providers, especially because the content you request is at the center of the appeal we filed in this matter. It seems contrary to our discussions about having your expert talk to our expert about what we have and what steps we've taken to preserve material, and is not a productive step in the discussions we've had regarding resolving this matter.

Please consider this our formal request to withdraw/modify the subpoenas. First, in regards to Councilmembers Sittenfeld, Landsman, and Seelbach, they each have preserved the texts that are the subject of your discovery requests and submitted the relevant texts for an in camera inspection in the public records case. In fact, as an additional precaution, each of them had their cell phones imaged within the last few weeks which preserves a complete digital copy of their entire cell phones. There is simply no additional relevant information for the cell phone provider to provide, and the information you request in your subpoena is likely to include privileged materials.

As for Councilmember Dennard, we informed you that the cell phone she was using in the beginning of 2018 was damaged, but that her new phone was imaged. That new phone did not contain texts from the timeframe of the public records request litigation. We informed you that we were using Binary Intelligence to take any and all steps to recover information from Councilmember Dennard's old phone, and that they were

also working with Councilmember Dennard to access any cloud backups of her phone. Councilmember Dennard was completely cooperative in this process, and her old phone was restored by Binary Intelligence. The Law Department is now in possession of the image of the old phone, and it does contain the text messages from all relevant timeframes to both lawsuits. We are currently reviewing and exporting those messages into a format reviewable by the First District. So, again, there is simply no additional relevant information to obtain from Councilmember Dennard's cell provider either, and the material you seek is likely to contain privileged materials.

As for Councilmember Young, he has been cooperative in all steps to recover text messages. At this time, it does not appear that there is a cloud backup of his texts, and his phone has been imaged. At the moment, the Law Department is not in possession of any additional text messages from the relevant time frames. We further note that the information you seek is likely to contain privileged materials.

Finally, we do not see any reason for the subpoenas to ask for all text messages sent or received from these phone numbers. This is a particularly invasive request that delves into personal communications between spouses and family members. Even in the context of the apparent pending criminal investigation, the County Prosecutor recognized the sensitivity of such information and requested that the Court appoint a special master to handle the materials. You also go far beyond the subject matter of this litigation to request all voicemails and emails—again, without any limitation. You seek information about joint accountholders as well—people with whom communications cannot possibly create open meetings liability. We cannot see how this request has any legitimate purpose in relation to this litigation.

Please take immediate steps to withdraw and/or modify the subpoenas. We look forward to your response.

Emily Smart Woerner
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